

State Enforcement of Nondiscrimination Requirements in Education Programs

A report prepared by the Iowa, Kansas, Missouri, and Nebraska
Advisory Committees to the United States Commission on Civil Rights

August 1986

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The United States Commission on Civil Rights, first created by the Civil Rights Act of 1957, and reestablished by The Civil Rights Commission Act of 1983, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice; investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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LETTER OF TRANSMITTAL

Iowa, Kansas, Missouri and Nebraska
Advisory Committees to the
U.S. Commission on Civil Rights

October 1985

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Dear Commissioners:

The Iowa, Kansas, Missouri and Nebraska Advisory Committees submit this report on their study of State enforcement of Federal nondiscrimination requirements in education programs. The report was adopted unanimously by the members of the four Advisory Committees.

This report continues the review of State efforts to ensure nondiscrimination that these Advisory Committees began with their studies of State government affirmative action efforts, civil rights agency activities, and prevention of discrimination in the Pub.L. 97-35 block grants. Data for our study was obtained from the State education departments of Iowa, Kansas, Missouri and Nebraska and the Region VII unit of the Office for Civil Rights of the U.S. Department of Education.

The Advisory Committees found that the quality of civil rights compliance efforts by State education departments varied from State to State. The State of Iowa conducted annual reviews of civil rights problems in key school districts and made recommendations for changes. The Committees urge that the Kansas, Missouri and Nebraska State education departments develop and implement annual comprehensive reviews.

The Advisory Committees found great variation in the quality of the procedures and practices used by the State vocational education agencies to review compliance with vocational education civil rights requirements. The Committees urge the State education departments of Iowa, Kansas, Missouri and Nebraska to revise existing procedures and develop new procedures to ensure civil rights protection for all children.

The Advisory Committees found considerable reluctance by the State education departments to assume deferral roles in the administration of Federal civil rights requirements. The Committees recommend that the U.S. Commission on Civil Rights consider a nationwide study of the willingness and capacity of State

education departments to assume a deferral role on civil rights matters in the schools.

We urge you to consider the contents of this report in your program planning and to assist these Advisory Committees in their follow-up activities.

Respectfully,

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Missouri Advisory Committee

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1. Introduction

The Iowa, Kansas, Missouri and Nebraska Advisory Committees have longstanding concerns about the enforcement of civil rights protections for students. The Iowa Advisory Committee last expressed its concern in its statement on school suspensions.¹ The Kansas Advisory Committee dealt with education questions in its statement on *Brown v. Board of Education* and a monograph on school desegregation efforts in Wichita.² The Missouri Advisory Committee expressed its concerns in two reports.³ The Nebraska Advisory Committee did one report on desegregation.⁴

In view of the increased concern about civil rights enforcement, the Advisory Committees believed it would be appropriate to determine the level of current civil rights enforcement efforts by State education agencies and their willingness to assume greater responsibility for enforcement of Federal civil rights requirements. To do so, the Committees obtained information from the Iowa Department of Public Instruction, the Kansas Department of Education and the Nebraska Department of Education. The Missouri Department of Elementary and Secondary Education was unable, on advice of the State Attorney General, to provide data because of pending litigation (although it offered to provide the requested data when the litigation ended).⁵ Data for

Missouri therefore was obtained from Court orders in various Missouri desegregation cases and from the Office for Civil Rights of the U.S. Department of Education which also provided data on the vocational education activities of Iowa and Kansas.

Before publication a draft copy of this report was sent to all affected parties to allow them to correct any errors. Their comments and corrections have been incorporated or are otherwise reflected in the final report.

Chapters 2 to 5 have two themes. Prohibitions of discrimination in education are not pre-empted by the Federal Government, although the various Federal prohibitions are the best known. Title VI of the 1964 Civil Rights Act, Title IX of the Educational Amendments Act, Section 504 of the Rehabilitation Act of 1973, The Education of All Handicapped Children Act, the Age Discrimination Act of 1975 and a variety of Federal Court decisions have given Federal legal prohibitions the appearance of omnipresence.⁶ In fact, however, there are also State prohibitions of varying extent. Some are part of civil rights statutes, others are specific to education, and still others arise simply from the regulatory process of State education agencies. In the first part of Chapters 2-5 the Advisory Committees review the various State legal prohibitions of discrimination

¹ Iowa Advisory Committee, *A Statement on School Suspensions in Selected Iowa School Districts* (February 1980).

² Kansas Advisory Committee, *A Statement on Brown v. Board of Education* (May 1979); U.S. Commission on Civil Rights, *School Desegregation in Wichita, Kansas* (August 1977).

³ Missouri Advisory Committee, *School Desegregation in the St. Louis and Kansas City Areas* (January 1981); *Crisis and Opportunity: Education in Greater Kansas City* (January 1977).

⁴ Nebraska Advisory Committee, *A Statement on the Status of the*

Implementation of the Nebraska Board of Education on Multicultural Education (July 1979).

⁵ John Ashcroft, Attorney General of Missouri, letter to Chairperson, Missouri Advisory Committee, June 22, 1983.

⁶ See: 42 USC §2000d; 20 USC §1681; 20 USC §1401 et seq.; and such decisions as *Adams* (351 F.Supp. 636 (D.D.C. 1972); 356 F.Supp. 92 (D.D.C. 1973); 480 F.2d 1159 (D.C. Cir. 1973); and *Lau*, 414 U.S. 563 (1974).

in education. Federal laws and regulations provide a comprehensive set of prohibitions against discrimination in education.⁷ These create obligations that States have assumed and usually delegated to the State education agencies. In addition, the States have imposed upon themselves various obligations to prevent or end discrimination, whether directly by legislation and regulation or as a consequence of Federal Court orders. Like their efforts at self-regulation, State education agencies' efforts to ensure compliance with antidiscrimination requirements have varied both by State and by subject matter. In the second part of Chapters 2-5, the Advisory Committees review the efforts of the four States to ensure compliance with both Federal and State prohibitions of discrimination.

⁷ See: U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Budget: Fiscal Year 1983* (June 1982), p. 9.

This study was undertaken by the Advisory Committees pursuant to their mandate under the Civil Rights Act of 1957, as amended, that they study civil rights developments within States and report their findings and recommendations to the Commission for its consideration.

This report was approved by the four Advisory Committees in September 1983. At the request of the Office of the General Counsel of the U.S. Commission on Civil Rights, some of the data in the report was revised to reflect information that became available in Summer 1985. Copies of the revised report were made available to current Advisory Committee members for their information. The substance of the report, however, is attributed to the work of the Committees as they were constituted in September 1983.

2. Iowa

State Laws and Regulations

The Iowa Board of Public Instruction is composed of nine members, appointed by the Governor with the approval of two-thirds of the members of the State Senate. Not more than five of its members can be of the same political party. The board is "a policy-making body of the lay people with the same relationship to all the public schools in Iowa as that existing between the local board of education and the local school district."¹ The board also appoints the State superintendent of public instruction who directs the work of the board's executive arm, the Iowa Department of Public Instruction (DPI). According to the State, the department provides educational leadership by (1) planning for each major area of service and coordinating the planning for the State program of education, (2) conducting research to assist in formulation of policy and evaluation of programs, (3) offering advisory services by persons specialized in certain phases of school operations, (4) providing coordination to promote unity and encourage proper balance, (5) supplying information to keep the public aware of educational needs and progress, and (6) supporting in-service education to foster the continuing growth of all persons engaged in education in the State.²

Although the State delegated broad authority to local school districts for the management and operation of education programs, the department was

charged with guaranteeing at least minimum performance through regulations known as "standards" for Iowa schools. These standards were established by statute or by the department through the authority granted it by the statutes.³

The department also offered services to local school districts when the scope, expense, or technical nature of these services made them more easily offered on a broad scale, and centralized service to individuals, such as vocational rehabilitation.

The State superintendent was given the responsibility for coordinating the department's work. The superintendent met the obligation by working through five major branches: School Administration, Instruction and Professional Education, Pupil Personnel Services, Area Schools and Career Education, and Rehabilitation Education and Services. Each of these branches was headed by an associate superintendent, working under the general supervision of the deputy superintendent.⁴

The annual budget for the 1984-1985 fiscal year of the agency was \$900.5 million. The Federal contribution to that was \$102 million (or 11.3 percent).⁵

The Superintendent of Public Instruction stated that Section 257.25; Chapter 280; Chapter 601; Chapter 601a and Chapter 729 of the Iowa Code

¹ Superintendent of Printing, *Iowa Official Register—1983-84* (Des Moines: Superintendent of Printing of the State of Iowa, 1983), p. 472.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ James Mitchell, DPI, telephone interview, Sept. 3, 1985. This includes all funds disbursed to local and area education agencies.

contained provisions regarding nondiscrimination in education.⁶ The Code and accompanying rules specify in considerable detail what shall be taught in the schools.⁷ Chapter 280 describes the uniform school requirements. Section 280.3 specifies that "The board of directors of a public school district shall not allow discrimination in any educational program on the basis of race, color, creed, sex, marital status or place of national origin."⁸ Chapter 601 establishes the State Commission on the Status of Women. It empowers the Commission to cooperate with government agencies in equalizing opportunities, publish and disseminate information relating to women, and develop other educational programs.⁹ Chapter 601a refers to the Iowa Civil Rights Commission's powers and duties. Section 601a.9 specifically prohibits discrimination based on sex in education. The clause states:

It shall be an unfair or discriminatory practice for any educational institution to discriminate on the basis of sex in any program or activity. Such discriminatory practices shall include but not be limited to the following practices:

- (1) On the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity, except athletic programs;
- (2) On the basis of sex, denial of comparable opportunity in intramural and interscholastic athletic programs;
- (3) On the basis of sex, discrimination among persons in employment and the conditions thereof;
- (4) On the basis of sex, the application of any rule concerning the actual or potential parental, family or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions dependent upon the physician's diagnosis and certification.

For the purpose of this section "educational institution" includes any public preschool, or elementary, secondary, or merged area school or area education agency and their governing boards. Nothing in this section shall be construed to prohibit any educational institution from maintaining separate toilet facilities, locker rooms or living facilities for the different sexes so long as comparable facilities are provided.¹⁰

⁶ Dr. Robert D. Benton, Superintendent of Public Instruction, letter to Chairperson, Iowa Advisory Committee, July 5, 1983 (hereafter cited as DPI Letter).

⁷ Iowa Code Chapter 280.

⁸ Iowa Code §280.3.

⁹ Iowa Code §601.5.

Violation of these provisions is basis for a complaint to the Iowa Civil Rights Commission which, after determining probable cause and attempting conciliation, may, after public hearing, require a remedy.¹¹ These orders are subject to judicial review.¹²

The board has published a statement on policies and guidelines on nondiscrimination based on race, color, religion and national origin in Iowa schools. It has not adopted these as rules because their provisions may go beyond the authority of the agency.¹³ Thus, the policies and guidelines, while advisory, do not have the force of requirement that rules have. The portion of the statement dealing with nondiscrimination asserts:

The Constitution of the State of Iowa (Article IX, Section 12) states that provision shall be made "...for the education of all youths of the State." The school laws of Iowa provide for the establishment, governance, and financial support of schools. If a school district does not provide school facilities, such district is required to pay the tuition and transportation costs for all its pupils attending the public school or schools it shall designate.

Iowa not only provides school for all children, it also requires that all children "...over seven and under sixteen years of age in proper physical and mental condition to attend school. . ." shall be caused to attend school.

In this State there should be no barrier to education based on the fact that a child may be the member of any minority group. Segregation deprives all segments of society, both the minority and the majority, of the vital life experiences without which they are culturally and educationally disadvantaged. Any form of segregation which divides children by color, creed, economic status, or national origin deprives them of a full view of, and participation in, our society.

All school districts of Iowa should move toward the goal of providing equal educational opportunities for all children. The State Board further declares that it will foster in all schools measures to guarantee that every pupil will be given education and treatment that is in no way biased on a basis of race, creed, economic status, or national origin.

Persons or agencies responsible for the establishment of school attendance centers or the assignment of pupils thereto should exert all effort to prevent and eliminate racial segregation or racial imbalance in pupil enrollment. The prevention and elimination of such segregation or imbalance should guide decisions relating to school build-

¹⁰ Iowa Code §601a.9.

¹¹ Iowa Code §601a.15.

¹² See: Iowa Code §601a.17.

¹³ DPI Letter.

ing sites, school attendance areas, and school enrollment practices.

Efforts should be made to prevent and to eliminate segregation of children and staff by reason of race, creed, economic status, or national origin in programs administered, supervised, or controlled by the Department of Public Instruction.¹⁴

On Nov. 9, 1972, the Board of Public Instruction adopted guidelines to give effect to its statement. These note that the board requested each district provide data on the racial composition of schools annually and that the board would request that some districts submit plans to remedy racial isolation in the schools. The Board stated that:

Each plan should contain: (a) an explicit, unqualified commitment by the local school board to fulfillment of the conditions set forth in these guidelines; (b) a detailed description of the specific actions to be taken to correct each specified problem together with a statement of the intended effect of each action proposed; (c) with respect to the entire plan, and each specific action proposed, a timetable showing dates of implementation and completion; (d) involvement of community groups and parents in the development and implementation of corrective plans.

In the formulation of plans to prevent or eliminate minority group isolation in schools, local school boards should consider and employ all methods that are educationally sound, administratively and economically feasible, including but not limited to: school pairings and groupings; grade reorganization; alteration of school and school district attendance zones and boundaries; pupil reassignments and such optional transfers as are consistent with the condition of these guidelines; establishment of educational parks and plazas; rearrangements of school feeder patterns; interdistrict cooperative plans; specialized or "magnet" schools; differentiated curricular or other program offerings at schools serving children predominantly of different racial groups at the same grade level; reassignments of faculty, staff, and other personnel; affirmative recruitment, hiring, and assignment practices to insure that the faculty, staff, and other personnel, at all attendance centers within systems, become and remain broadly representative racially.

Plans that are based upon parent-pupil choices, or are otherwise voluntary or optional, will fulfill these guidelines only to the extent that they actually prevent or eliminate minority group isolation in schools because of color, race, nationality, or low income.

On the basis of race, creed, origin, or environment status, all plans to effect school desegregation and integration

should be equitable and nondiscriminatory. The process of integration should be shared by all and not borne disproportionately by pupils and parents of racially identifiable or low income groups.

Local school boards should not adopt nor maintain pupil grouping or classification practices which result in racial segregation of pupils.

All decisions by local school boards concerning selection of sites for new schools and additions to existing facilities should take into account the requirements of eliminating and preventing racial segregation in schools because of color, race, or nationality.

The State Department of Public Instruction will review plans and amendments supplied under these guidelines and will determine whether they follow these guidelines.

Upon finding that a plan or amendment meets these guidelines the State Board will promptly give written notice to the local school board to that effect.

Upon finding that a local school board has not developed a plan or that a submitted plan or amendment is conditionally acceptable, or wholly or in part unacceptable, the State Department of Public Instruction will promptly advise the local school board in writing of its findings. This communication should specify the reasons for disapproving, wholly or in part, the plan or amendment.

Upon finding that a local school board has failed or refused to meet these guidelines within the time periods specified (or within a reasonable time thereafter if, in his judgment, further consultation may effect the result), the State Superintendent shall:

- (a) notify the affected local school board;
- (b) report such findings to the State Board of Public Instruction.

After the review of the findings, as provided for in section 5.1(b), the State Board may forward such findings to the Iowa Civil Rights Commission and the Office for Civil Rights, HEW.¹⁵

In addition, the Educational Equity Section of the Department of Public Instruction published a comprehensive planning guide to assist districts in assessing the extent to which they were desegregated and aid them in devising a remedial plan of action.¹⁶

Statement of the Iowa State Board of Public Instruction on Nondiscrimination in Iowa Schools (Nov. 9, 1972).

¹⁶ Iowa Department of Public Instruction, *Planning Guide for Equal Educational Opportunities* (April 1973).

¹⁴ Iowa Department of Public Instruction, *Policy Statement of the Iowa State Board of Public Instruction on Nondiscrimination in Iowa Schools* (May 20, 1971).

¹⁵ Iowa State Board of Public Instruction, *Guidelines for Policy*

Implementation of State and Federal Laws and Regulations

Iowa's compliance efforts are divided into two parts. The Educational Equity Section of the Field Services and Supervision Division of the Instruction and Professional Education Branch conducts comprehensive reviews of school desegregation efforts in the eight school districts in Iowa with significant desegregation problems. The results have been published annually for several years. The second element of Iowa's efforts are reviews of districts for compliance with Federal vocational education regulations prohibiting discrimination. These result in annual reports to the U.S. Department of Education, Office for Civil Rights.

The Educational Equity Section required the 10 school districts that had schools that did not meet the State's guidelines for nondiscrimination criteria to file periodic (usually annual) reports. The Department stated that it was important to analyze the progress of the integration efforts after desegregation had taken place and that resegregation should be avoided. These reports were reviewed and recommendations were made by the State's staff for future district efforts, following on-site visits by staff.¹⁷

One measure used by DPI in its analysis is "disproportion." Describing its definition of disproportion, DPI stated:

The Department used ten (10) percentage points above the district-wide minority percentage to determine disparity by race in suspensions, expulsions, drop-outs or special education assignments. If the district-wide minority percentage is 6.0 percent and the minority suspension rate was 22.5 percent, the Department would regard it disproportionate. However, in another district where the minority percentage is 17.6 percent, the 22.5 percent suspension rate would not be regarded as disproportionate. Where the numbers of students involved in a program are very low, the large percentage calculated for minority students is not statistically significant to regard as showing disparity.¹⁸

In the disproportion analysis, DPI staff looked at the racial ratio of students in the school district compared to students in the various buildings, programs, and students who were suspended, expelled or dropped out. Thus, in the report, DPI analyzed each

building in each of the districts it reviewed and commented on the success in reducing racial isolation. But DPI also analyzed the reasons for the racial isolation and discussed in detail the various efforts made by the school districts to reduce it. Similarly, DPI analyzed the rates at which minority students were suspended, expelled, dropped-out or participated in special education classes. In these analyses, DPI used its statistics very cautiously. It carefully analyzed district policies and did not declare disproportion when a review of students' records showed that despite apparent numerical disproportion there was no reason to believe these were due to discriminatory practices. It did declare disproportions where there was a lack of evidence that the districts' policies made sufficient effort to ensure that disproportions were not the result of discriminatory practices, however unintentional.¹⁹

The department made detailed recommendations for actions to be taken by the school districts on matters ranging from employment and pupil desegregation efforts to monitoring of suspensions/expulsions and the utility of particular programs. This was the only such review in the region and was a particularly valuable source of information on the status of desegregation efforts.

Separate from the school desegregation reviews, the department conducted reviews of vocational education programs' compliance with U.S. Department of Education issued vocational education guidelines which reference 45 C.F.R. Parts 80, 84 and 86. These were conducted by the Career Education Division with the assistance of the Educational Equity Section and the Field Services and Supervision Division. In 1985, there were 380 elementary and secondary school districts, 15 merged area schools and 5 area education agencies receiving Federal vocational education funding. In 1985, Iowa desk audited 155 agencies and conducted on-site reviews of 59 to make up for past years' undercoverage. The normal rate would be 80 desk audits and 25 reviews. These were done with a staff of 38. But only nine spent more than 10 percent of their time on such issues.²⁰

Stewart, Consultant, Educational Equity Section, DPI, letter to CSRO staff, Oct. 16, 1985.

²⁰ Iowa, Department of Public Instruction, *Annual Report, 1985, Methods of Administration for Office of Civil Rights Guidelines for Vocational Education Within Career Education* (June 28, 1985), pp. 1-15.

¹⁷ Robert D. Benton, Ed.D., Superintendent of Public Instruction, letter to CSRO staff, Sept. 8, 1983 (hereafter cited as DPI Comment Letter). See also FN 22 below.

¹⁸ DPI Comment Letter.

¹⁹ Iowa, Department of Public Instruction, *1984-85 Desegregation Progress Report* (Oct. 11, 1985). See also, Cyndy Reed-

The desk audit was to be conducted on recipients that were not the subjects of pending civil rights litigation in Federal or State courts and that were not the subjects of pending or recent investigations or enforcement actions by the Department of Education, Office for Civil Rights. Districts would be selected for audit based on written reports of possible noncompliance obtained from complaints, reports of possible noncompliance by State civil rights or advisory agencies, OCR reports, internal departmental reports, and program evaluations by the State Advisory Council for Vocational Education. To determine what districts would be audited, the department used data already on file such as:

1. Vocational Education Enrollment: male/female, racial/ethnic, and disability characteristics of the total school or merged area population were compared to enrollment in vocational education programs. Two fiscal years of data were analyzed to ascertain positive or negative trendlines.
2. Staff data (vocational education instructors and counselors)—based on sex and race, as compared to student population data or merged area population data.
3. Data on membership of vocational education advisory committees and councils on the bases of sex and race—compared to Iowa work force data.
4. Information on sex equity and other civil rights related activities—as submitted by the districts on Vocational Education and Basic Data reports.²¹

This data was computerized.²²

To rank districts the following procedures were used:

- a. percent by variance in enrollment (double weight enrollment by sex and selected districts, racial/ethnic)
- b. number of sex typed programs (double weight)
- c. percent variance in instructional staff
- d. percent variance in counseling staff
- e. percent variance advisory council representation (double weight)
- f. equity inservice

²¹ Ibid., p. 3.

²² Ibid.

²³ Ibid., p. 4.

²⁴ Ibid., p. 15.

g. evidence of positive or negative trendlines (double weight)

Selected double weightings were assigned as indicated above to data items felt to be more significant due to assumptions regarding accuracy of reported data and those items which have received greater priority for Departmental technical assistance activities.²⁵

During 1985, the department conducted desk audits on 155 subrecipients.²⁶ The worksheets developed for the desk audits provided all the guidance needed to enable the reviewer to determine any disparities. They were easy to use to highlight disparities. There was also a convenient form for determining what assurance and planning documents were in the department's files.²⁵

The department selected 59 school districts and one community college for on-site review during 1984-85.²⁸ These reviews were scheduled to take between one and three days.²⁷ The guidelines provided that in addition to interviewing school personnel, the staff were to interview various advisory committee members and students, both in and outside the vocational education programs.²⁸ There were many items to the review. The reviewer was instructed to use the worksheet to determine:

—whether there were assurances on file for compliance with Title VI, Title IX and Sec. 504;

—whether the district had adopted a policy statement of nondiscrimination in both employment and programs on the basis of race, national origin, sex and handicap;

—whether there were written grievance procedures and whether these were publicized;

—whether there was a process for notifying parents, employees and students of the agency's policies; whether the agency had adopted and implemented a written grievance procedure for parents, staff and students to handle Title IX or Sec. 504 complaints and whether information about this was sufficiently disseminated;

—whether there were designated Title IX and Sec. 504 coordinators and whether their roles and locations were publicized;

—whether there were written grievance procedures and whether these were publicized;

—whether Title IX and Sec. 504 self-evaluations had been conducted;

²⁵ Ibid., Appendix E.

²⁶ Ibid., p. 15.

²⁷ Ibid., Appendix F, p. 10.

²⁸ Ibid., Appendix I.

—whether the agency had developed a multicultural, nonsexist education plan it maintained on file and available to the public; and, whether the plan was developed with input from men and women and minorities and the disabled;

—whether recruitment was nondiscriminatory; and, whether affirmative efforts had been made to attract students not traditionally involved, including whether course descriptions were free of bias or stereotyping;

—whether admissions criteria had disparate impact; and if so, had any review been made to determine the cause, including reviews of academic or experimental prerequisites, recruitment efforts, affirmative action goals, the validity of existing procedures;

—whether curriculum guidelines reflected multicultural, nonsexist concepts;

—whether texts, if used, reflected the perspectives and contributions of men, women and diverse racial/cultural groups;

—whether placement assistance and counseling practices and materials were free of stereotyping or bias; whether the same materials were used for both sexes, different groups, and the disabled; and, whether where segregation had occurred there were reviews to determine counseling, counseling materials or testing were not the cause;

—whether any programs were segregated; and if so, whether reviews had been conducted to determine that policies and practice were bias free as to sex, race, and national origin, English ability or disability;

—whether there were diverse role models among counselors, administrators and instructors; and, whether employment policies, practices, application forms, job descriptions and the staff handbook were free of bias;

—whether advisory committees reflected the diversity of the area, community and students and included representatives of all groups in the community;

—whether there was a program to meet the needs of students with limited English-speaking ability;

—whether there were individualized education plans on file for all special education students in voc-ed programs;

—whether extracurricular programs, honors and awards were open to all;

—whether rules of behavior were equitable or punishments disproportionate;

—whether pregnancy was covered by any health insurance plan and treated like any other temporary disability;

—whether the agency ensured that work programs were free of discrimination and employers signed nondiscrimination assurances;

—whether housing (if provided) was nondiscriminatory as to sex, race/national origin or handicap.²⁹

The Iowa on-site review guidebook ensured that all issues were fully understood by the reviewers and fully explored. Thus, the guide included clear explanations of the issues, rather than merely copies of the regulations, and a variety of subquestions designed to explore compliance with the key elements of issues rather than encourage broad assertions of compliance. For example, the reviewer was required not merely to assert that vocational course or program descriptions were free of bias but that they contained no language, illustrations or content that was biased or stereotyped.³⁰

DPI provided the following description of the results of its reviews:

All fifty-nine districts received a letter of findings and most of the districts have submitted a voluntary compliance plan in response to the letter of findings. Follow-up visits to assess completion of activities specified in the voluntary compliance plan will occur during the 1985-86 school year and will be conducted by the regional consultants in the Field Services and Supervision Section.

Each letter of findings contained sections entitled "areas of noncompliance," "areas of strength" and "areas of concern." For each area of noncompliance, the pertinent rules and regulations were cited in an attachment.

A summary of the most frequent areas of noncompliance and areas of concern follows:

Areas of Noncompliance

1. Annual announcement of nondiscrimination policy (41 [local education authorities] LEAs).

2. Grievance procedures not established or not inclusive (50 LEAs).

3. Sex segregated classes/inequitable student recruitment practices (22 LEAs).

4. Vocational education advisory committee membership—lacked appropriate representation of males/females (10 LEAs).

5. Agreements with employers for work experience programs, job placement, or cooperative training lacked nondiscrimination statements (13 LEAs).

²⁹ Ibid., Appendix I.

³⁰ Ibid.

6. District nondiscrimination policies failed to address employment procedures; instructional programs; and issues involving the handicapped were omitted in some cases (2 LEAs).

7. Employment application forms contained inappropriate questions (13 LEAs).

8. School buildings were not accessible to handicapped students and the districts had not developed a plan to provide services (14 LEAs). . . .

11. School district has not designated a Title IX/Section 504 coordinator (5 LEAs).

12. The school district's nondiscrimination policy has not been published *annually* (33 LEAs).

13. Assessment measures to identify Limited English Proficient (LEP) students have not been established (9 LEAs).

14. Individualized Education Plans do not identify the support services necessary for special education students in vocational education courses (3 LEAs).

15. No written criteria for establishing salary criteria for new staff members without regard to race, color, national origin, sex, marital status or handicap (1 LEA).

Areas of Concern

1. School district did not have the following documents on file:

—Statement of Assurance (Section 504—24 LEAs; Title IX—20 LEAs; Title VI—17 LEAs).

—Self-Evaluation (Section 504—35 LEAs; Title IX—21 LEAs).

—Actions Taken as a Result of Self-Evaluation (1 LEA). . . .

3. Some districts did not have guidelines for the selection of textbooks and instructional materials (27 LEAs); . . .

4. School districts had no curriculum or resource guides (3 LEAs); . . .

5. Job descriptions, policy statements and other district materials contained sexist language (7 LEAs).

6. Counseling practices do not encourage students to enroll in nontraditional courses and programs (21 LEAs).

7. Title IX/Section 504 Coordinator has not been performing that assignment (15 LEAs).

8. Pre-requisites for courses had not been reviewed to assure that these requirements were related to successful student completion (10 LEAs).

9. Student interest inventories and counseling instruments had not been reviewed for sex bias/sex-role stereotyping (10 LEAs). . . .

10. Textbook content and illustrations were biased and contained sex-role stereotypes (12 LEAs).

11. Vocational advisory committees are inactive (22 LEAs).

12. Instructional programs for limited English proficient (LEP) students need review and revision to more appropriately serve students (2 LEAs).

13. External agencies which provide scholarships or other awards need to be notified of the school district's nondiscrimination policy (6 LEAs).

14. Employment forms have questions with doubtful legality (11 LEAs).

15. Written vocational course descriptions are not available for student review before registration (21 LEAs).³¹

The department was asked whether it could or would assume responsibility for administering some of the civil rights requirements now within the jurisdiction of the U.S. Department of Education, Office for Civil Rights. Its Commissioner responded:

It has been the position of this Department that it has not been granted authority for enforcement of State laws or promulgation of State administrative rules in the areas of civil rights/antidiscrimination. . . . We do feel we have some authority in the areas of educational program equity. . . .

It would be my assumption that if this agency were to assume "deferral responsibility for assuring compliance with Federal antidiscrimination laws," legislative action would be required. I have no valid base on which to make a judgment on whether such an action would be approved. I would feel that the payment of administrative costs would definitely be part of any legislative determination on this matter.³²

The U.S. Department of Education, Office of Civil Rights, last reviewed the DPI's compliance in November 1984. Commenting on the report for 1984, OCR stated:

A deficiency was noted regarding the amount of staff time allotted to the MOA [vocational education compliance]

Instruction, letter to Chairperson, Iowa Advisory Committee, July 5, 1983.

³¹ Ibid., pp. 5-6.

³² Robert D. Benton, Ed.D., State Superintendent of Public

program. Although there are a large number of staff members assigned to the MOA program, the amount of time being spent by each person on MOA related activities is not substantial. It does not appear that the current amount of staff time allocated to conducting the agency-level reviews and on-site reviews for fiscal year (FY) 1985 is sufficient to meet the State's MOA commitment. This conclusion is based on the facts that the State will be conducting twice the number of agency-level reviews and on-site reviews completed in previous years and there is no indication that there will be an increase in the amount of staff time committed to implementing these activities.

Major deficiencies exist regarding the timely completion of both agency-level and on-site reviews. The State has only completed 62.9 percent of the agency-level reviews and 11.3 percent of the on-site reviews. Pursuant to the

³³ Jesse High, Regional Director, OCR, letter to Robert Benton, Nov. 28, 1984.

MOP, the required percentages for 1984 are 80 percent of the agency-level reviews and 20 percent of the on-site reviews.

OCR is in receipt of the State's revised schedule of MOA activities which includes the State's commitment to complete 155 agency-level reviews and 59 on-site reviews by the end of FY 1985. These activities will enable the State to correct its major deficiencies in completing the required number of agency-level and on-site reviews by the end of the first five-year cycle.

OCR is requesting quarterly status reports, so that we can monitor the State's MOA progress on a continuous basis.³³

Some minor deficiencies also were noted.³⁴

³⁴ Ibid.

3. Kansas

State Laws and Regulations

The Kansas State Board of Education is comprised of 10 members elected to four year terms in partisan elections from special election districts each of which comprises four State senatorial districts. Its mission is to "exercise leadership in providing to Kansas citizens—regardless of race, creed or socioeconomic status—quality educational opportunities which develop intellectual, physical, social and vocational skills consistent with their developmental ability."¹ The board's self-description asserts that it is "an advocate for students; responsibility for educational services does and should rest at the local level."² The board's goals include provision of equal educational opportunity, provision of quality education, encouragement of professional growth by educators, promotion of curriculum improvement, effective legislation and financial services for local entities.³ It also supervises the Kansas State School for the Visually Handicapped and the Kansas State School for the Deaf.⁴ Its work is conducted by the Kansas Department of Education whose commissioner it appoints. The department has three primary divisions: agency services, education services and financial services.⁵ The department had a budget in July 1984–June 1985 of \$660.8 million of which

\$71.8 million (or 10.9 percent) came from Federal funds.⁶

The State Commissioner of Education stated that:

The State of Kansas has no specific laws, as such, prohibiting discrimination in primary and secondary education. *Kansas Statutes Annotated* (K.S.A.) 72-6202 provides that the Kansas State board of education is authorized and empowered to do all things necessary to comply with and carry out any Federal law or regulations governing the distribution of Federal funds for educational purposes. We do not interpret this law as giving the State board of education authority to investigate and prosecute civil rights violations.⁷

Under Kansas Administrative Regulations (K.A.R. 91-31-3), the State board required each school district to adopt policies, in writing, that would prohibit discrimination on the basis of race, religion, color, ethnic background, national origin, ancestry, physical handicap, or sex, in employment of staff or selection of pupils.⁸ This regulation was made pursuant to Kan. Stat. Sec. 72-7513(a)(3).⁹ There was no report of enforcement activity under this section, presumably because there was no refusal to implement.

The operations budget for FY 1985 was \$6.8 million of which \$2.6 million were Federal funds. Dale M. Dennis, Assistant Commissioner, Memorandum to CSRO staff, Aug. 30, 1985.

⁷ Merle R. Bolton, Commissioner of Education, letter to Chairperson, Kansas Advisory Committee, July 6, 1983 (hereafter cited as KDE Letter).

⁸ K.A.R. 91-31-3.

⁹ KDE Letter.

¹ Kansas State Board of Education, *Kansas State Board of Education* (May 1983).

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Kansas State Department of Education, *Kansas State Department of Education Directory* (April 1983).

⁶ This includes funds disbursed to local education authorities.

Implementation of Federal and State Laws and Regulations

Commenting on the Kansas Department of Education civil rights efforts, its Commissioner, in part, stated:

The history of the Kansas State Department of Education activities to enforce civil rights/antidiscrimination State laws of regulations has been limited. The enforcement agency for State laws and regulations has been the State commission on civil rights. A minimum of enforcement would occur through the accreditation process. . . .

The department activities over the past three years to comply with our obligations under Title VI of the Civil Rights Act, Title IX of the Education Amendments Act and Section 504 of the Rehabilitation Act and other specific program requirement are as follows:

a. The department has developed and operates under an *Affirmative Action Plan*.

b. All Federal program areas receive assurance from their subgrantees that they will comply with the Federal civil rights requirements.

c. Although there is no specific responsibility in many of these program areas to monitor the Federal civil rights compliance of subgrantees, there may be special requirements in the program law and regulations requiring the monitoring of equal educational opportunity. For example, the special education administration section of the department does monitor for compliance in relation to the State mandate and P.L. 94-142. The specialist in school facilities of the department reviews blue prints for new construction to determine compliance with handicapped access.

d. The vocational education administration section of the department has written and implemented a *Methods of Administration (MOA) Plan* as required by Federal legislation: Title 45—Public Welfare; Subtitle—A Department of Health, Education and Welfare—"Vocational Education Programs," Guidelines for eliminating discrimination and denial of services on the basis of race, color, national origin, sex and handicap.

These guidelines explain the civil rights responsibilities of recipients of Federal funds offering or administering vocational education programs. They derive from and provide guidance supplementary of Title VI of the Civil Rights Act of 1964 and the implementing departmental regulation (45 C.F.R. Part 80), Title IX of the Education Amendments of 1972 and the implementing departmental

regulation (45 C.F.R. Part 86), and Section 504 of the Rehabilitation Act of 1973 and the implementing departmental regulation (45 C.F.R. 84). . . .

I believe our State operation is very similar to that of vocational education in most States. No new staff was hired to implement these activities and no additional funding has been provided for staff time nor travel. All assignments are being handled by staff in addition to other regular responsibilities.¹⁰

Responsibility for implementation of the vocational education guidelines is vested in the department's Vocational Education Administration Section. Seven persons, some from vocational education and some from other divisions, participated in the administration of the guidelines.¹¹ The Kansas "Methods of Administration" plan called for review of at least 20 percent of all 233 subrecipients annually by desk audit and on-site reviews of one-quarter of these.¹² But the department would not review districts that were the subject of pending civil rights litigation or pending or recent investigation or enforcement efforts by U.S. Department of Education or pending or recent investigation or enforcement by the Kansas Commission on Civil Rights.¹³ Districts were selected based on information about possible non-compliance in complaints, reports from other State agencies, DED/OCR reports, past compliance reviews, reviews by the Council for Vocational Education, information in OCR's Vocational Education Survey, form 1979. Other districts were selected for review on a random basis.¹⁴ The desk audits included information on instructors and enrollment. Reviewers were to analyze the racial/ethnic distribution, by program and by school, compared to the distribution in the 9-12 grade population of the area served. They were to analyze the male/female distribution compared to the "assumed" male/female distribution of the total area served by the local education authority. They were to compare:

—the number of eligible handicapped students being served with the number identified as eligible;

—the number of students of limited English-speaking ability students being served with the number in grades 9-12 of the area;

¹⁰ Ibid.

¹¹ Kansas Department of Education, *Kansas Vocational Education Civil Rights Report for FY 1985* (June 24, 1985) (hereafter cited as *Kansas Annual Report*), Exhibit A-85.

¹² Kansas Department of Education, Vocational Education Administration Section, *Kansas Methods of Administration for Office of Civil Rights* (February 1980) (hereafter cited as *Kansas MOA*), p. 7.

¹³ Kansas MOA, p. 8 and Harry M. Singleton, Assistant Secretary for Civil Rights, letter to Kansas Commissioner of Education, May 3, 1984.

¹⁴ Ibid.

—the number of disadvantaged students served, to district enrollment;

—the race, sex and handicap status of teachers and counselors, by group, to the proportions of students with these characteristics;

—the proportions of students by race, sex, or handicap in work study or apprenticeship or cooperative education programs, to the total number of students in district.¹⁵

These were to be used as ranking factors in determining which districts would have on-site reviews.¹⁶

In FY 1985, 54 districts were desk audited.¹⁷

Kansas' on-site review guidelines were based on Missouri's and had been revised based on staff recommendations.¹⁸ In the next chapter, the Advisory Committee presents its review of Missouri's guidelines and its deficiencies. These are equally applicable to Kansas, except that Kansas did at least collect data on population for comparative purposes, although there was no evidence that this was used during the on-site review. But, it was clear that, at least in earlier years, the information was supplied to staff who were to conduct the on-site reviews.¹⁹

The Advisory Committees reviewed the State's report for FY 1985. These show that a total of 15 districts/programs were selected for on-site review in FY 1985. The department's reviewers found the following deficiencies in documentation:

—Two districts lacked complete statements of assurance for Title IX and Section 504

—Two districts had not conducted Section 504 self-evaluations

—Fourteen districts had not designated and published information regarding coordinators for Title IX and Section 504

—Five districts had not published required notices of nondiscrimination regarding Title VI, Title IX and Section 504

—Eleven districts had failed to develop or revise and publish grievance procedures for students and employees

—One district had failed to add its nondiscrimination policy to its student handbook and curriculum handbook

—One district had failed to provide documentation to substantiate the procedural safeguards for Sec. 504 hearings and procedures

—One district failed to provide documentation to substantiate identification and notification to the handicapped regarding their right to a free and appropriate public education

—Three districts had failed to establish Vocational Agriculture-Home Economics Advisory Committees, submit lists of committee members and committee minutes

—Five districts had failed to revise and publish personnel policies in appropriate documents.²⁰

The department reported that it prepared voluntary plans of compliance and followed-up to ensure that these were returned within 90 days of the department's letter of findings.²¹ It also reported that at the beginning of FY 1985, 14 subrecipients were out of compliance but that by February 1985 all had completed and submitted the necessary documentation to satisfy their compliance plan.²² The department also stated that it monitored subrecipients by reviewing their compliance documentation to ensure that standards were met.²³

Under its methods of administration, the Kansas Department of Education was to notify the regional Office for Civil Rights of the U.S. Department of Education:

a. if the subrecipient fails to take corrective action to remedy violations found during the on-site review, and it is determined that voluntary compliance cannot be secured within 90 days after sending the on-site review notification of findings.

b. if a subrecipient submits a plan that is inadequate, but is working in good faith to remedy its deficiencies if [sic] within 120 days after sending the on-site review notification of findings.²⁴

Kansas Department of Education had not done so, presumably because, it either achieved or expected to achieve voluntary compliance.

The data available made it difficult to assess the quality of Kansas' review efforts. The material submitted to the U.S. Department of Education summarized findings and did not show the detailed

¹⁵ Ibid., pp. 9-10.

¹⁶ Ibid., p. 10.

¹⁷ Kansas Annual Report, p. 8.

¹⁸ Carole Oberle, program specialist, Kansas Department of Education, telephone interview, July 20, 1983; Merle Bolton, letter to CSRO staff, Sept. 23, 1983.

¹⁹ Carole Oberle, memorandum to vocational education staff, January 1982.

²⁰ Kansas Annual Report, Exhibit 0-85.

²¹ Ibid., p. 10.

²² Ibid.

²³ Ibid.

²⁴ Kansas Department of Education, *Education Methods of Administration for Office of Civil Rights* (February 1980), p. 18.

worksheets provided in Missouri and Nebraska reports.

In addition to reviews, the department provided a range of technical assistance services. These included workshops for several districts, workshops for single districts, and *ad hoc* assistance.²⁵

Generally, the Kansas Department of Education believed it had limited powers regarding the operation of school districts. The Commissioner stated:

Please be advised that I do not believe that our agency has independent authority to enforce civil rights laws or violations or to handle deferred cases. Section 2a and 5 of Article 6 of the *Kansas Constitution* provide that the State board of education shall have the "general supervision" of the public schools of Kansas. The facts and holding of the court interpreting the meaning of "general supervision" can be found in *State, ex rel. v. Board of Education*, 212 Kan. 482 [1973], a copy of which is enclosed. In that case the court held that "'supervision' means something more than to advise but something less than to control." Since the time of the State board's adventure in that case, it has not gotten involved in that entanglement.²⁶

The Committees asked whether the State department would be prepared to assume some of the compliance responsibilities now held by the Office for Civil Rights of the U.S. Department of Education. Its Commissioner replied:

What the committee is proposing is almost a totally new and foreign concept for the State board of education that would definitely require comprehensive legislative action and funding. Certainly, at this stage of the matter we would not know how to assume that type of responsibility. Policing violations and being law enforcement officers would be a totally new undertaking for this agency that would require totally new staffing patterns. As you must know, State and local education agencies are already heavily burdened with activities that are designed to bring social change and are alien to their historical mission of educating children. We have no way of knowing what the reaction of the legislature would be to this type of activity.

I would like to further comment that the State of Kansas has a civil rights commission that at least covers all areas of employment and housing that involve civil rights violations. I do not know the further extent of its

authority, especially with regard to students and school operation, but if the law governing the civil rights commission's jurisdiction needs to be broadened, the legislature would have to make this decision. It certainly seems to me that to extend civil rights enforcement to the State board of education would be a costly duplication. Thus, the pursuit of any violations of persons' civil rights in Kansas should be the prerogative of the State civil rights commission. And even an extension of its responsibilities it seems to me would be a costly duplication of what is already provided and carried out on the Federal level.

I would like to point out further that during my years as Kansas Commissioner of Education I have been a strong advocate of local control of education wherever possible, and it seems to me that what your committee is contemplating would be contrary to this basic concept and would tend to impair the good working relationships we have and need with local school districts in carrying out educational courses and programs. I am not aware of any serious or increased civil rights violations on the local level in Kansas, and am quite concerned about the concept of seeking a change in the level of enforcement of Federal or even this State's civil rights laws.²⁷

The Office for Civil Rights of the U.S. Department of Education reviewed Kansas' vocational compliance program in May and November 1984. OCR insisted in its May letter that Kansas delete from the pool to be desk audited only districts subject to OCR investigation of their vocational education program, include racial ethnic data and teacher assignment information in subsequent reports, desk audit minority enrollment of feeder schools, provide copies of compliance plans, provide descriptions of technical assistance provided, and refer to OCR any subrecipient who was out of compliance for 90 days.²⁸ In November 1984, OCR asked that objective standards be developed for on-site investigations. It also insisted that the State begin monitoring compliance implementation. It asked that greater attention be given to racial disparity in selection of sites for on-site review and that better files be maintained.²⁹ It would appear from the 1985 Kansas report that these deficiencies were addressed, in whole or in part.³⁰

²⁵ Data provided by DED/OCR, prepared by Kansas Department of Education, on file at CSRO.

²⁶ KDE Letter.

²⁷ Ibid.

²⁸ Harry M. Singleton, Assistant Secretary for Civil Rights (U.S. Department of Education), letter to Kansas Commissioner of Education, May 3, 1984.

²⁹ Jesse High, Regional Director, OCR, letter to Kansas Commissioner of Education, Nov. 28, 1984.

³⁰ See: Kansas Annual Report.

4. Missouri

State Laws and Regulations

The Missouri State Board of Education is composed of eight members appointed by the Governor and confirmed by the State Senate for terms of eight years. It is responsible for supervision of the public schools of the State and appoints a commissioner who serves as its chief administrative and executive officer. The commissioner directs the State Department of Elementary and Secondary Education whose staff are appointed by the board, on recommendation of the commissioner.¹ According to the State official manual:

A review of the legal responsibilities delegated to the State Board of Education reveals that the Department of Elementary and Secondary Education is largely a service agency. Its services are designed to assist local school districts in carrying out the requirements prescribed by State law and to provide leadership in the improvement of the administration and instruction of the public schools of the State.²

The department had divisions of administration, instruction, career and adult education, special education, urban and teacher education, and vocational rehabilitation, and included the staff of the Missouri School for the Deaf, Missouri School for the Blind, State schools for the severely handicapped and extended employment sheltered workshops.³ The annual budget for the 1985 fiscal year of the agency could not be obtained because of pending litigation involving the department.

¹ Missouri, Secretary of State, *Official Manual, 1981-82* (n.d.), p. 382.

² *Ibid.*

³ *Ibid.*, pp. 382-388.

Because of pending litigation, the Missouri Commissioner of Elementary and Secondary Education was not able to provide information of the legal status of his agency and on laws regarding nondiscrimination. However, the roles of the State board of education, the department, and the commissioner were fully described by Chief Judge James H. Meredith, of the Federal District Court for the Eastern District of Missouri, in his decision in *United States v. State of Missouri*,⁴ and the portions of the decision about the department and its role were affirmed on appeal by the Eighth Circuit Court of Appeals.⁵ Describing the general functions of the State, the Court stated:

The State Board of Education is vested with the power to supervise instruction in the public schools and otherwise carry out the educational policies of the State. It also distributes State funds to local school districts. In addition, the State board has the duty to advise and provide technical assistance to county boards of education in developing school district reorganization plans and may approve or reject such plans. The Commissioner of Education is the chief administrative officer of the State Board and responsible for implementing its directives and policies.⁶

Commenting on the State's responsibilities, the Court stated:

Having chosen to provide a free, public education, the State must ensure that the education is provided in a

⁴ 363 F. Supp. 739 (E.D. Mo. 1973).

⁵ *United States v. Missouri*, 515 F.2d 1365 (8th Cir. 1975).

⁶ 363 F. Supp. 739 (E.D. Mo. 1973) at 742.

manner which does not discriminate against any group of persons on account of their race and which is consistent with the Equal Protection Clause of the Fourteenth Amendment.

A State, such as Missouri, which has in the past operated a racially dual system of public education, pursuant to State constitutional and statutory requirements is, and has been since 1954, under an additional constitutional obligation to take such affirmative measures as are necessary to disestablish that dual system and to eliminate the continuing vestiges of that system.⁷

The Court noted that in addition the State had deliberately created and maintained a segregated school district.⁸ The Court stated:

The State cannot escape responsibility for the racial discrimination disclosed in this case or the obligation to correct the effects of such discrimination by neatly compartmentalizing the authority and responsibilities of its various instrumentalities and then contending that no single instrumentality is wholly responsible for the unlawful segregation or has the power to correct the unlawful segregation. The constitutional rights of children not to be discriminated against on grounds of race, color, or national origin can neither be nullified openly and directly, nor nullified indirectly through evasive schemes for segregation, whether attempted ingeniously or ingenuously, and every law or resolution of the legislature, every act of the executive, and every decree of the State courts, which, no matter how innocent on its face, seeks to subvert the enjoyment of a constitutional right is unconstitutional and null.⁹

The Court noted that the State had the authority to reorganize the school districts of Missouri to better accomplish the educational policies and the responsibilities of the State.¹⁰ Where reorganization resulted in discrimination, the Court held that "The State and county defendants cannot justify their exclusion . . . on the grounds that other school districts would oppose such a reorganization."¹¹ The Court reiterated in *Liddell v. Board of Education* that the State had a wide range of obligations to dismantle that residue of past segregative acts to which it was a party.¹²

While the State and its education authorities may have been reluctant in the past to act on racial matters, they did act on matters involving the

handicapped. In 1973 State statutes were modified to ensure there would be no denial of educational services because of handicap and that handicapped students would be "mainstreamed" to the maximum extent possible.¹³

Implementation of State and Federal Laws

Although the Missouri Department of Elementary and Secondary Education (DES) was unable to provide any data on its activities because of pending litigation in St. Louis and Kansas City, the Advisory Committees obtained copies of the department's Methods of Administration and 1985 annual report regarding compliance with the civil rights requirements by vocational education programs around the State. These summarize what the department agreed it would do to ensure compliance with Federal civil rights requirements and what it did to implement those agreements.

The Missouri program was administered by the Department of Elementary and Secondary Education, Division of Career and Adult Education. This agency reported it had 12 persons assigned full or part-time to administration of the guidelines.¹⁴ The department conducted desk audits and on-site reviews. The latter were a part of more general Career and Adult Education Division reviews.¹⁵ The former were supposed to cover 20 percent of the total number of recipients of Federal vocational education funds. The department did not review districts that had been reviewed in the last five years, that were subject to pending civil rights litigation in Federal or State courts, or that were the subjects of pending or recent investigations or enforcement actions by the Office for Civil Rights of the U.S. Department of Education (DED/OCR).¹⁶

The criteria for selection of districts to be reviewed gave priority to those districts scheduled for evaluation of their vocational programs, DED/OCR reports of possible compliance problems, "written reports of alleged noncompliance obtained from verified complaints filed by any citizen in the State of Missouri," reports from State

¹⁴ Missouri, Department of Elementary and Secondary Education, *Missouri's Civil Rights Compliance Annual Report* (June 28, 1985)(hereafter cited as Annual Report), p. 1.

¹⁵ Ibid., p. 5.

¹⁶ Missouri Department of Education, *Methods of Administration for Office for Civil Rights Guidelines* (Feb. 21, 1980), p. 8.

⁷ Id. at 746-747.

⁸ Id. at 747-748.

⁹ Id.

¹⁰ Id.

¹¹ Id. at 749.

¹² Findings of Fact and Conclusions of Law, 491 F.Supp. 351 (E.D. Mo. 1980).

¹³ Mo. Rev. Stat. §162.680 and 162.681.

civil rights agencies or advisory committees, written reports of alleged noncompliance developed during other program reviews, and the published DED/OCR civil rights surveys.¹⁷

During the desk audits reviewers were to examine the DED/OCR civil rights survey data of all schools and the 1979 vocational education survey, any information about possible noncompliance, contained in the material listed above, consortium or similar agreements. The reviewers examined total enrollment by race, sex, and handicap of each vocational center, the ethnic, sex, and handicap composition of staff and the ethnic/sex/handicap composition of participants in apprenticeship related programs. These were supposed to be compared to total school population of the level comparable to program participants'.¹⁸

The questionnaire used to evaluate compliance during on-site reviews was used to determine:

—whether the district had designated Title IX and Sec. 504 coordinators,

—whether this had been publicized and what their responsibilities were;

—whether the district had copies of its Title VI, Title IX and Sec. 504 assurances in its files;

—whether the district had conducted the Title IX and Sec. 504 evaluations, who was on the Advisory Committee that prepared the evaluation, what actions were taken to implement suggested changes;

—whether the district had provided public notices of nondiscrimination regarding Title VI, IX, and Sec. 504;

—whether there had been annual public notice to students, parents, staff and public that the program would be operated free of discrimination;

—whether the district had adopted and publicized a grievance procedure for Title IX and Sec. 504 for both students and employees;

—whether the district had reached out to all qualified handicapped persons to notify them of the availability of a free appropriate public education; whether a system of procedural safeguards under Sec. 504 had been established;

—whether advisory committee members were broadly representative and included minorities and women;

—whether apprenticeship programs discriminated under Title VI, Title IX or Sec. 504;

—whether the location of a facility had a discriminatory effect;

—whether the district's facilities were accessible to the handicapped and whether self-evaluations had been conducted, transition plans prepared and changes made;

—whether the district's facilities were segregated as evidenced by alternate facilities, duplicate or special programs;

—whether the district provided transportation without discrimination; whether the district's recruitment, selection and admission procedures had a discriminatory effect on targeted populations;

—whether guidance and placement services had a discriminatory effect in terms of counselor assignment, referral, pre-employment efforts, testing, discipline or guidance plans;

—whether participant businesses in cooperative education programs were required to provide assurance of nondiscrimination;

—whether financial aid was provided on a nondiscriminatory basis;

—whether hiring practices were nondiscriminatory.¹⁹

These guidelines were in many respects deficient. The questions did not require reviewers to determine the adequacy of the grievance procedure, or if it had been used, with what results. The annual census of handicapped persons was reviewed, apparently, without regard to its quality. Standards were not provided by which reviewers might determine whether advisory committee membership included minorities or women. Although asked to determine whether apprenticeship programs were nondiscriminatory, the evidence required did not include investigation of whether or not the programs discriminated. Only a statement of nondiscrimination by the program operator was required.²⁰

To determine whether facilities were segregated reviewers were supposed to examine an enrollment profile by program. But they were not provided with standards by which to test for potential discrimination, such as comparisons to the population of all students, nor were they given an indica-

¹⁷ Ibid., pp. 10-11.

¹⁸ Ibid.

¹⁹ Missouri Department of Elementary and Secondary Educa-

tion, *Missouri Civil Rights Compliance Review Guide for Vocational Education* (n.d.). SUMMARY.

²⁰ Ibid.

tion of the level at which disparities become significant.²¹

To determine whether transportation was provided on a nondiscriminatory basis, reviewers were to rely on the chief administrator of the district. They were not asked to ascertain whether minorities, women, or handicapped might have special unmet needs.²²

Although asked to review recruitment, selection and admissions procedures for discrimination, reviewers did not review applicant flow to determine whether there were particular obstacles, nor were they asked to contact community persons for their views. While reviewing guidance and placement services, the reviewers were asked to determine whether there was discrimination without examining the effects of the processes they reviewed. Although asked to ensure that employer participants in cooperative education and job placement did not discriminate, they were asked merely to review agreements but not required to note a deficiency if agreements lacked commitments to prohibit discrimination. The reviewers were asked to determine whether district employer practices were nondiscriminatory without detailed information on the available work force. They were not required to determine whether particular parts of the process were discriminatory by reviewing applicant flow.²³

In response to complaints from DED/OCR, the department agreed to make some modifications, including, ensuring notification to persons who were not proficient in English, ensuring handicapped students were not guided to more restrictive career goals than nonhandicapped and ensuring recipients did not discriminate in making available opportunities in cooperative education, work study and job placement.²⁴

The State desk audited 80 secondary programs and 7 higher education programs in FY 1985.²⁵ If this was 20 percent of all such programs, there were about 400 secondary districts in the State with vocational programs.

The desk audit materials supplied to U.S. Department of Education did not contain any indication of

extensive analysis of a district. The materials in appendix B of the State's FY 1985 report consisted entirely of tables that reported vocational education enrollment data, a handicap census for 1983-1984, and 1980 census of population and laborforce data. The percentages for each category were calculated.²⁶ The letters sent to the districts selected for desk audit uniformly stated that there was no finding in the desk audit of discrimination.²⁷ This was hardly surprising, since there was no indication of on what basis a finding of discrimination could be made, given the data assembled for the desk audit. But the department, in its report, stated: "The data concerning Title VI, Title IX, and Section 504 was analyzed along with assumptions made regarding potential concern of civil rights violations. Ultimately 20 plus percent of the districts were identified to be reviewed on-site."²⁸

To administer the program, the division had a compliance review committee composed of one assistant commissioner, three division directors, and one assistant division director.²⁹

The department provided copies of its correspondence regarding compliance for FY 1985. These showed a total of 39 findings of noncompliance from the 16 school districts subject to on-site reviews in FY 1985. Table 1 shows the questions on the State's questionnaire items for which violations were reported for FY 1985.

The State department received plans from 11 districts of the 15 found in noncompliance. (It found no violations in one of the 16 districts it reviewed.) Two districts had not exhausted their 45 day timeline to develop plans. Two districts had failed to submit plans and had exhausted their time period.³⁰ Many of the violations were purely technical, such as failure to adequately publicize nondiscrimination policies. But many corrective plans accepted by the department provided only vague promises to remedy the alleged violations.³¹ In all cases where a plan was accepted, the State department asked the districts to provide documentation of implementation as that occurred.³² Although two districts failed to

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Jesse L. High, Regional Director, DED/OCR, letter to Arthur L. Mallory, Commissioner of Elementary and Secondary Education, Nov. 9, 1982.

²⁵ Annual Report, pp. 8-10.

²⁶ Ibid., Appendix B.

²⁷ Ibid.

²⁸ Ibid., p. 7.

²⁹ Annual Report, p. 4.

³⁰ Data supplied by OCR, on file at CSRO—the Annual Report.

³¹ Ibid.

³² Ibid.

TABLE 1

Question no.	Question	No. of districts with violations
1	Has the district designated coordinator(s) under Title IX and Section 504?	2
3	Has the district conducted a self-evaluation as required under Title IX and Section 504?	10
4	Has the district met all requirements regarding notification of its policy of nondiscrimination (i.e., the particular requirements contained in Title VI, Title IX and in Section 504, as well as the annual notification of the Vocational Education Guidelines)?	10
5	Has the district adopted and disseminated a grievance procedure for employed personnel and students as required under Title IX and Section 504?	6
11	Has the district made facilities and programs accessible to and usable by handicapped persons?	3
16	Does the district assure that agencies, organizations and businesses which they enter into agreement with for the purpose of employment and/or training of students (i.e. cooperative education, work study, and job placement) do not discriminate on the basis of race, color, national origin, sex or handicap?	1
18	Are the district's personnel policies discriminatory on the basis of race, color, national origin, sex, or handicap?	7

Source: Data supplied by OCR, on file at CSRO. Missouri, Department of Elementary and Secondary Education, *Missouri's Civil Rights Compliance Annual Report* (June 28, 1985).

submit plans at all, no district was reported to OCR as in violation of the civil rights regulations.³³

The State department did provide technical assistance to school districts on civil rights matters. It stated:

Technical assistance for civil rights compliance was provided for administrators of all school districts scheduled for on-site reviews, individuals requesting assistance, graduate students preparing for vocational administration positions, and the Division's staff assigned to conduct the on-site reviews.

An orientation program was conducted during August for personnel representing community junior colleges, and public school districts hosting area vocational schools, which were scheduled for on-site reviews. The orientation included a discussion of the 18 questions, regulations and acceptable evidence contained in the publication, "Missou-

ri Civil Rights Compliance Review Guide for Vocational Education." The school districts' contact person and the Division's reviewers met for the purpose of clarifying the procedures to be used during the on-site review. . . .

The MOA Coordinator presented information and led a discussion of the civil rights regulations to the vocational administration class at Southwest Missouri State University located in Springfield, Missouri, in July, 1984. The class was composed of five area vocational school directors and eight vocational supervisors.

The staff members assigned to conduct the civil rights on-site reviews participated in a one-day work session to review and discuss the pertinent civil rights regulations, informational materials, and procedures related to their assignments. This work session occurred in August, 1985.

In addition to the technical assistance initiated by the Department, . . . [the department provided technical assistance such as model grievance procedure, general infor-

³³ Annual Report, p. 18.

mation regarding civil rights regulations, Section 504 regulations information material, Section 504 self-evaluation, Title IX self-evaluation inspection for accessibility, general information regarding notice and self-evaluations, model personnel application, sample nondiscrimination statement, to 9 school districts.]

Technical assistance was provided, upon request, to assist school districts in developing and implementing voluntary compliance plans in response to the letter of findings.

A total of 71 technical assistance telephone conversations were conducted during the 1984-85 school year. The primary purpose of these calls was to discuss information regarding the regulations for Title VI, Title IX, and Section 504, and the Vocational Education Guidelines. These telephone calls were initiated by the local school districts.

Over 40 copies of the publication, "Missouri Civil Rights Compliance Review Guide for Vocational Education" were disseminated to school districts including community junior colleges and area vocational-technical schools.

Samples of grievance procedures, self-evaluation forms for Title IX and Section 504, do's and don'ts of interviewing, and notice of nondiscrimination were disseminated upon request.

Orientation to the on-site review process and a workshop for staff members assigned to conduct compliance reviews were conducted.³⁴

The State department also conducted monitoring and follow-up. It stated:

Monitoring Progress

1983-84 Voluntary Compliance Plans—An attempt was made to close all reviews for the 1983-84 on-site visits for civil rights compliance. The implementation of the voluntary compliance plan frequently extends into the next school year due to the timing of notices (prior to the beginning of the school year), appointment of committees, etc.; however, each district has cooperated with the MOA Coordinator in developing a voluntary compliance plan.

All school districts reviewed during the 1983-84 school year have completed their voluntary compliance plan. The efforts by the MOA Coordinator to verify this accomplishment consisted of numerous telephone calls and letters of correspondence.

1984-85 Voluntary Compliance Plans—The 1984-85 on-site reviews have been completed. Letters of findings have been sent to all districts reviewed, and 15 of the districts have a voluntary compliance plan which has been approved by this office including six districts which have totally completed their voluntary plan for civil rights compliance. The deadline of 45 days allowed for submis-

sion of a voluntary compliance plan has not expired at this time for the remaining school districts. . . .

Monitoring activities will begin as the dates scheduled for implementation become due. Information in the form of sample documents has been sent to the districts on a request basis.

Follow-up

Procedures have been established for the purpose of following through on recommendations made to the school districts as a result of the on-site civil rights compliance reviews. The chief school administrator of the school district responds to the recommendations made by the Compliance Review Committee by submitting a voluntary compliance plan to the MOA Coordinator. When the voluntary compliance plan is approved, the implementation phase is monitored by the MOA Coordinator until all recommendations have been implemented. A tickler file is used to alert the MOA Coordinator as to the state of implementation. If documentation is due but not received, contact via telephone and/or correspondence is made to determine the status of progress being made in fulfilling the compliance plan. In some instances compliance is achieved almost immediately. In other cases, there is a time lapse between the approval of the compliance plan and the documentation as proof of compliance. For example, notice of nondiscrimination in vocational programs prior to the beginning of the school year, the commitment is made, but actual notice will not occur until prior to the beginning of the school year.

All districts reviewed during the 1983-84 school year have completed their voluntary compliance plan. To date, there have been no school districts refusing voluntary compliance.³⁵

The Office for Civil Rights of the U.S. Department of Education reviewed Missouri's 1983-1984 report and found several deficiencies:

. . . the way in which the State agency used the [desk audit] data was not adequate to identify all potential problem areas relating to Title VI. Specifically:

1. The State agency compares the enrollments of students at the district where the vocational education program is located to the total enrollments in the vocational program. However, no comparisons of the racial composition of other sending schools and/or districts are made;
2. Specific vocational education program enrollments are not reviewed on the basis of race; and
3. Employment statistics by race are not being considered during the desk audit.

Identification of Subrecipients for On-Site Review

³⁴ Ibid., pp. 14-17.

³⁵ Ibid., pp. 19-20.

Twenty-nine (8 percent) of your subrecipients underwent on-site reviews in FY 84. To date, 28 percent of all subrecipients have received on-site reviews.

Since the State agency did not use adequate procedures in conducting its agency level reviews, it cannot assure itself that subrecipients with potentially the most severe compliance problems are being selected for on-site review. From the method described in the Annual Report, it appears that the State agency is selecting subrecipients for review based on the student enrollment in the district where the vocational education program is located and is not considering, as it should, enrollment statistics regarding students in sending schools or districts.

OCR reviewed all information the State agency had on file with respect to three of its reviews.

Our review of the information revealed that sufficient evidence was not analyzed to determine that the subrecipients had complied with the regulations in certain areas. Specifically:

1. It appears that the State agency reviewed only schedules of classes to determine that students were not being discriminated against on the basis of race in their assignment to industrial arts and home economics classes. The State agency's review should have included consideration of such factors as student counseling and promotional materials in accordance with the Guidelines, Section V (B and E).

2. A visual inspection of a vocational education facility is made to determine that location does not interfere with or impede vocational opportunities for minority students.

The Guidelines, at Section IV B, in part state that recipients must locate vocational education facilities at sites that are readily accessible to both nonminority and minority communities, and that do not tend to identify the facility or program as intended for nonminority or minority students.

Recipients may not establish, approve or maintain geographic boundaries for a vocational education center service area that unlawfully exclude students on the basis of race, color, or national origin. The State agency did not

review the geographic boundaries for a vocational education service area or attendance zone to determine whether students were being unlawfully excluded on the basis of race, color, or national origin.

3. A review of the listing of all financial aid available and interviews with administrators are being used to determine that the subrecipient is not discriminating on the basis of race in the provision of financial aid.

The Guidelines, at Section VI B, state that recipients may not award financial assistance in the form of loans, grants, scholarships, special funds, subsidies, compensation for work, or prizes to vocational education students on the basis of race, color, national origin, sex or handicap, except to overcome the effects of past discrimination. By merely reviewing what financial aid is available without investigating how the aid is distributed, the State agency has not assured itself that the subrecipients in question are administering their financial aid programs in a nondiscriminatory manner.

Technical Assistance Provided

A description of types of technical assistance provided and the names of those subrecipients requesting technical assistance was included in the Annual Report. However, a description of the technical assistance provided specifically to assist subrecipients in correcting civil rights violations was not included in the Annual Report. Moreover, the State agency did not report all technical assistance provided.

Subrecipients Referred to OCR

No subrecipients have been referred to OCR for failure to correct compliance problems. All subrecipients have made commitments to comply with the State agency's recommendations within the time frames specified.

Monitoring Activities

Procedures have been developed for monitoring activities of subrecipients that entered into voluntary compliance agreements. Monitoring activities consist of a tickler file, follow-up telephone calls, and if necessary, follow-up letters. This system complies with the requirements of your MOA.³⁶

³⁶ Jesse High, Regional Director, OCR, letter to Missouri Commissioner of Education, Dec. 14, 1984.

5. Nebraska

State Laws and Regulations

The Nebraska State Department of Education is supervised by an eight member State Board of Education that is elected on a nonpartisan ballot from eight special districts for terms of four years. The members of the State board appoint a Commissioner who supervises the State Department of Education which, according to the State's official manual, strives for the improvement of educational opportunities for all of the people of Nebraska. Learning and the growth and development of young people are major objectives. The department is also concerned with the educational needs of adults and the general welfare of the State of Nebraska.¹ The functions of the commissioner include internal administration of the department, interpreting school laws, planning and evaluation of education, providing information on educational practices, and administration.² The department also services the professional practices commission which considers complaints about professional ethics and practices.³ The department's own activities were primarily conducted by divisions of rehabilitation services, school support and operations, and vocational education.⁴ The department had a total budget for July 1984-June 1985 of \$255 million of which \$57 million (or 22.4 percent) came from Federal funds. Its opera-

tional budget was \$19 million, of which \$9 million (or 47.4 percent) came from Federal funds.⁵

The Nebraska Civil Rights Act of 1969 prohibits as discriminatory actions by anyone who:

directly or indirectly refuses, withholds from, denies, or attempts to refuse, withhold, or deny, to any other person any of the accommodations, advantages, facilities, services, or privileges, or who segregates any person in a place of public accommodation on the basis of race, creed, color, sex, religion, national origin, or ancestry. . . .⁶

And it defines as a public accommodation "Any public facility owned, operated or managed by or on behalf of this State or any agency or subdivision thereof, or any public corporation, and such facility supported in whole or in part by public funds. . . ." The Nebraska Equal Opportunity Commission has jurisdiction to accept and process such complaints.⁷ But the Commission has never actually received such complaints regarding education and whether the public accommodation clause does reach education has not been legally determined.⁸

In 1982, the Unicameral (legislature) passed legislation prohibiting discrimination on the basis of sex,

¹ Nebraska Legislative Council, *Nebraska Blue Book, 1982-1983* (n.d.), p. 513.

² *Ibid.*, p. 514.

³ *Ibid.*, p. 515.

⁴ *Ibid.*, pp. 515-534.

⁵ Mike Stefkovich, Comptroller, Nebraska Department of Education, telephone interview, Aug. 28, 1985.

⁶ Neb. Rev. Stat. §20-134.

⁷ Neb. Rev. Stat. §20-133(5).

⁸ Neb. Rev. Stat. §20-140.

⁹ Larry Myers, Executive Director, NEOC, telephone interview, Aug. 1, 1983.

the Nebraska Equal Opportunity in Education Act.¹⁰

This prohibited discrimination based on sex by any educational institution and defined discrimination as:

1. Exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity except athletic programs;
2. Denial of comparable opportunity in intramural and interscholastic athletic programs;
3. Discrimination among persons in employment and the conditions of such employment; and
4. The application of any rule which discriminates on the basis of (a) pregnancy of any person, (b) the marital status of any person or (c) the condition of being a parent. Rules requiring certification of a physician's diagnosis and such physician's recommendation as to what activities a pregnant person may participate in are permissible. For purposes of this section marital status shall include the condition of being single, married, widowed, or divorced.¹¹

The statute required that governing boards of educational institutions adopt rules and regulations to implement the act and that the State department of education provide technical assistance in this, upon request.¹² Persons believing there had been a violation of the statute could file a complaint with the governing board of the violating institution in writing, under oath, within 180 days of the alleged violation. The governing board was empowered to take corrective action and could award an aggrieved person monetary damages. The claimant could accept the decision of the governing board within 60 days of receiving a formal notice of its decision. If the claimant did not accept the disposition, he or she might, within 180 days of receipt, file an original action in the district court of the judicial district in which the educational institution was located for equitable relief and compensatory monetary damages and might have a jury trial. If the governing body failed to act within 180 days of receiving a complaint, the complainant was also free to begin court action, but no action could begin unless a complaint was filed first with a governing board.¹³

¹⁰ Neb. Rev. Stat. §79-3001.

¹¹ Neb. Rev. Stat. §79-3001(3).

¹² Neb. Rev. Stat. §79-3001(4).

¹³ Neb. Rev. Stat. §79-3001(5)-(9).

¹⁴ Nebraska Department of Education, Division of Vocational

Implementation of Federal and State Laws and Regulations

The bulk of the Nebraska Department of Education (NDE) compliance activities was conducted pursuant to 45 C.F.R. Parts 80, 84 and 86, "Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap." There were other activities conducted in connection with accreditation of schools or certification of teachers. There were also significant technical assistance activities connected to administration of the State Board of Education 1979 Statement on Title IX and the Nebraska Equal Opportunity in Education Act that were similar to compliance efforts.

Vocational Education Compliance Activities

Compliance activities under vocational education regulations were supervised by the Assistant Commissioner in Charge of Vocational Education who managed implementation in accordance with Federal Guidelines for eliminating discrimination in vocational education programs.¹⁴ The OCR Compliance Officer for NDE managed the desk audits and on-site reviews that were part of the process and also provided technical assistance. The director of sex equity for the department provided technical assistance on elimination of sex bias in vocational education.¹⁵ The department's own review committee made the following findings and recommendations regarding its statewide efforts during the 1985 fiscal year.

It is the opinion of those reviewing policy and procedures that the procedures and policies of the Nebraska Department of Education are in compliance with Title IX, Title VI, Section 504, and Section II-A of the Vocational Education Programs Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap. . . .

A. Guidelines for Vocational Education

The Guidelines have not been revised since the last Policy and Procedure Review. At that time, it was determined they were nondiscriminatory.

B. *Collective Bargaining Agreements* The provisions of the Agreement are applied to all employees in the bargaining unit in a nondiscriminatory manner.

Education, Methods of Administration for Complying with Civil Rights Requirements in Vocational Education Programs (July 1984)(hereafter cited as Nebraska MOA), p. 3.

¹⁵ Ibid., p. 4.

C. State Plan for Vocational Education

The State Plan has been revised in accordance with the Carl D. Perkins Vocational Education Act (P.L. 98-524). Final Department of Education approval is pending, however, it has been reviewed by this office and determined to be nondiscriminatory.

D. Department of Education Policy Manuals

The format for the manuals identified above was revised since the last review. Actual changes in policies and procedures since the last review were found to be acceptable.

A position on the Affirmative Action Task Force is presently being held by this reviewer. The new goals and timetables reflect a commitment to equity.

No action has been taken on evaluating the status of the 1977 Accessibility Survey for the State Office Building. Although the building is accessible, it is felt that a number of modifications could be made to more clearly express a commitment to equal access.¹⁶

The department had comprehensive guidelines for both the desk audit and on-site review procedures. It obtained information for desk audit on the distribution of students by race and separately by sex for each of the principal types of vocational education programs and for the district as a whole. It obtained similar information on nontraditional students, handicapped students, disadvantaged students, and students with limited English-speaking ability. It also obtained information on the utilization of minority or female teachers in vocational education programs.¹⁷ Schools subject to desk review were ranked based on their demographic patterns and program offerings. Based on those rankings, some were selected for on-site review. In the ranking, points were awarded based on, *inter alia*, whether or not there was "no identifiable disproportion," "low identifiable disproportion," "substantial identifiable disproportion" or "more identifiable disproportion."¹⁸ The points for each group were summed to produce a districtwide total point score.¹⁹ The following, from NDE's 1985 report, describes the process used to select locations for on-site reviews:

There are 204 secondary programs and 7 Technical Community College Areas (18 campuses) offering Voca-

tional Education Programs in Nebraska. Forty-one (21%) of the secondary subrecipients were desk audited for civil rights compliance, 35 of the secondary schools to receive a desk audit were also the schools scheduled for vocational program review during the 1984-85 school year. Six of the 41 schools received a desk audit based on program review results and vocational staff input from the 1983-84 school year.

The procedure for conducting the desk audit for each secondary institution as outlined in the MOA, was as follows:

1. Each school selected for desk audit was notified 30 days prior to the audit. The letter of notification included information regarding the purpose of the desk audit and information on the review process.

2. Three worksheets were used to arrive at a point total for each desk audit.

A. *Informational Data:* Observations, correspondence, previous Program Review report comments, Vocational Special Needs Proposals, Local Plans, and data from OCR surveys were reviewed and appropriate information was recorded. One point for each item of concern was awarded and recorded on the Summary Sheet.

B. *Statistical Data:* The Vocational Education Data System (VEDS) and other data collected by the department were used to determine the percentage of male/female, national origin, handicapped, disadvantaged, limited English-speaking and vocational instructor populations in each vocational program. The difference between the vocational program enrollments of these populations and the total school enrollment of these populations was assigned a point value (as identified on the summary sheet).

C. *Summary Sheet:* Schools for on-site review were ranked according to their total points. With a few exceptions, those schools with the highest totals were selected for on-site review. The exceptions resulted from time constraints, geographic locations, and school size.

In addition to the nine secondary schools selected for on-site reviews, three postsecondary campuses were added to the on-site schedule. A desk audit was not conducted on the postsecondary institutions due largely to an insufficient data base. At least 2 of 18 postsecondary institutions will receive an on-site each year. Three postsecondary cam-

¹⁶ Nebraska Department of Education, Division of Vocational Education, *Annual Report—Fiscal Year 1985 for Administering Vocational Education and Civil Rights Guidelines* (June 1, 1985) (hereafter cited as *Annual Report*), pp. 3-4.

¹⁷ Nebraska MOA.

¹⁸ *Annual Report*, p. D-13.

¹⁹ *Ibid.*, pp. D-2 to D-14. The department also obtains data on junior college vocational education programs, although this was not a part of the Advisory Committees' reviews. The only differences involve questions on the availability of financial aid and student housing that are not applicable to secondary schools.

puses were selected for 1985-86 on-sites. This represents seventeen percent of all postsecondary campuses.²⁰

On-site reviewers used a checklist to determine compliance. They sought to determine:

—whether the procedural requirements for filing of assurance and public notice under Title IX, Section 504 and Title VI had been complied with, whether coordinators had been appointed for each of these and whether a formal grievance procedure had been established to remedy Title IX or Sec. 504 complaints;

—whether Title IX and Sec. 504 self-evaluations had been conducted as required and whether there was a plan to remedy any structural barriers as required by Sec. 504 (Supporting documentation was required.);

—whether there was discrimination in access and admission to vocational education based on site location or structural barriers, admissions policies, quotas, criteria that have disproportionately adverse effect on particular groups, exclusion of LEP (Less English proficient) students, discriminatory employment criteria, adequate promotional materials, availability of promotional materials in languages other than English, availability of prevocational programs (Again, appropriate documentation was required and forms were provided.);

—the effect of counseling on the vocational programs was examined and the reviewer was to determine whether counseling materials were free of bias, whether counselors sought to discourage students from enrolling in particular programs because of their race, sex, handicap, whether testing material was appropriate, whether counselors could communicate with LEP students;

—whether there was data on drop-outs and if so whether that showed disparities that might be caused by discrimination;

—whether secondary students in vocational education programs were mainstreamed and properly evaluated for placement;

—whether equal facilities were offered to students of both sexes in the program and in related extra-curricular activities;

—whether there was equal opportunity in work study, cooperative education, job placement and apprenticeship programs and whether these included efforts to ensure that employers/unions that discriminate cannot participate;

—whether the process of hiring staff for the district, promotions and personnel practices, were free of any discrimination;

—whether materials used in training were nondiscriminatory.²¹

The Nebraska Department of Education reviewed the compliance of nine secondary school districts during FY 1985. Many of the violations or concerns followed a similar pattern and were identified as negligence within specific categories, as shown in table 2. Four districts filed voluntary plans for compliance. Two others were late in submitting plans but had not been referred to OCR.²²

The State Department reported that since 1980 it had desk audited 88.2 percent of the still existing secondary programs (some had been abolished) and conducted on-site reviews on 29.4 percent.²³

During FY 1985 the Department provided a wide range of technical assistance, including materials and in-service training by departmental staff.²⁴

Department of Education, Office for Civil Rights, conducted a review of the 1983-1984 report by Nebraska. OCR concluded that the department had committed only a very minor technical infraction of the regulations. OCR concluded that Nebraska was in compliance on all other points.²⁵

The Nebraska Department of Education staff, located within other Divisions outside of vocational education, implemented compliance with Title IX on an *ad hoc* basis. They were instructed to note potential violations and refer them to the Equal Educational Opportunity Project Coordinator who would seek to provide technical assistance. If the district refused assistance, the staff person who noted the violations reported it to the Commissioner for action. If the Commissioner failed to obtain action by direct correspondence with the district, a notice of violation was sent to the U.S. Department of Education/Office for Civil Rights.²⁶

Senior staff of the Nebraska Department of Education contended that the department had little influence on events. They argued that their policy-makers, the State Board of Education, had insisted that the State do as little as possible to regulate the

²⁰ *Annual Report*, p. 5.

²¹ *Ibid.*, E-2 to E-18.

²² *Ibid.*, p. E-24 and p. 11.

²³ *Ibid.*, p. E-2.

²⁴ *Ibid.*, pp. 7-10.

²⁵ Jesse L. High, Regional Director, OCR, letter to Nebraska Commissioner of Education, Dec. 6, 1984.

²⁶ Anne Campbell, Commissioner, Nebraska Department of Education, Memorandum to State Board of Education, July 24, 1979.

TABLE 2

Violation	No. of districts
Publishing annual notices of nondiscrimination	9
Providing information concerning names and locations of 504 and Title IX Coordinator	9
Developing plans to remedy structural barriers	4
Developing district policies on nondiscrimination	2
Developing grievance policies for students or staff, alleging discrimination	7
Including nondiscrimination statements with cooperative education agreements with employees	2
Conducting Section 504 self-evaluations	1
Providing information on vocational education programs to handicapped patrons	1
Counseling to ensure participation of non-traditional students or inadequate attention to their portrayal in texts	6
Providing equal employment opportunity notices.	2

Source: Nebraska, Department of Education, Division of Vocational Education, *Annual Report—Fiscal Year 1985 for Administering Vocational Education and Civil Rights Guidelines* (June 1, 1985), E-2 to E-18. Data compiled by CSRO from narratives.

local schools, even where clear violations of department regulations had been documented.²⁷ In this regard, they argued their position was different from that of more active departments around the nation and that, as such, they were not the best source for change.²⁸ The staff noted that the board regarded "local control" as more than a "catch phrase," that it was a valued part of school governance in the State of Nebraska.²⁹

Title IX/Nebraska Equal Opportunity in Education Act Activities

Technical assistance activities, of course, are not the same as compliance. But the extensive guidelines provided by the State for use by local school districts in determining their compliance with Title IX and the Equal Opportunity in Education Act provided the basis for this, to the extent that the guidelines were implemented by local education authorities. The guides themselves, contained in "Infopak" were extensive. They explained to the local school districts what they needed to do in each area covered by the legislation: access to courses;

physical education; vocational education; guidance, counseling and testing; student treatment; athletics; student marital or parental status; employment; and financial assistance. In addition, detailed self-questionnaires were provided so that local officials could self-evaluate their compliance with the requirements for nondiscrimination based on sex. The inventories provided comprehensive bases for determining compliance.³⁰ Since the department had no responsibility for enforcement of the Nebraska Equal Opportunity in Education Act, it had not developed guidelines to do so.³¹ It would appear that the department could review district activities by requiring the completion of the guideline questionnaires and examining on-site what had been or would be done under Title IX. It was unclear why it had not done so.

The department also sent annual reminders of Title IX requirements to all school superintendents and offered them technical assistance.³² But these did not call for any reports from the local education authorities regarding their compliance activities. The department provided "Fast Packs" that were

²⁷ M. Anne Campbell and Gerald Sughrue of the Nebraska Department of Education, interview in Lincoln, Mar. 1, 1979 and M. Anne Campbell, letter to chairperson, Nebraska Advisory Committee, July 2, 1979.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Nebraska Department of Education, Sex Equity Project, *Infopaks: NDE Guidelines for Schools* (August 1983), Vols. 1-9.

³¹ Peggy Weeks, Sex Equity Consultant, Nebraska Department of Education, Memorandum to Beth Wierda, Legal Counsel, Nebraska Department of Education, Oct. 4, 1983.

³² Peggy Weeks, Memorandum to Beth Wierda, Oct. 4, 1983, Appendix A.

purely informational, including articles, pamphlets, and checklists culled from a variety of sources regarding Title IX issues.³³ The department also provided a variety of pamphlets, some prepared by its sex equity project and others by national organizations, regarding Title IX issues that were available to local education authorities upon request. Among its other technical assistance activities were:

—publication of a bibliography of Title IX related materials which is circulated to local education authorities so that they can borrow items of interest from the project library;

—publication of articles in the department's monthly publication, *Dateline Education*;

³³ Ibid., Appendix B.

³⁴ Ibid., Appendices D-L. See also "Assistance to Nebraska

—providing answers to specific Title IX questions raised by school officials;

—responding to school patron complaints about sex discrimination by offering technical assistance to school district superintendents;

—providing comprehensive curriculum materials for women's history week;

—providing comprehensive in-service programs including training of State department personnel in Title IX issues by the U.S. Department of Education, Office for Civil Rights.³⁴

Schools in Their Sex Equity Efforts, 1982-1983" contained in Peggy Weeks, Memorandum to Beth Wierda, Oct. 4, 1983.

5. Conclusions, Findings and Recommendations

Conclusions

The four Advisory Committees in Region VII reviewed the activities of the State education departments in Iowa, Kansas, Missouri and Nebraska, to determine what they were doing to enforce the Federal and State prohibitions of discrimination in education. Iowa had a comprehensive program to prevent discrimination. Nebraska had several pieces of a program: a comprehensive program regarding civil rights protections for vocational education, and a program to prevent discrimination based on sex, and minor programs of technical assistance on national origin issues. Kansas' efforts were more limited and pertained primarily to vocational education. Missouri had a vocational education review program.

Iowa's program was unique in monitoring school desegregation efforts. In an annual report, the Iowa Department of Public Instruction, Educational Equity Section, assessed the status of civil rights in key school districts. Its vocational educational compliance documents contained numerous items that a reviewer needed to adequately monitor what was happening in a program.

Kansas' program did not attempt to monitor civil rights requirements because it believed this was the duty of the State civil rights agency. Its review of vocational education civil rights requirements, required by Federal statute, was somewhat superior to Missouri's (whose procedures it copied) in at least obtaining numeric data.

The evaluation of Missouri was limited because pending litigation made comparable documentation and analysis of that State's efforts impossible. But the Federal Court decisions indicated a pattern of deliberate failure to enforce the law and the Constitution regarding segregated schools. The department's review of vocational education was generally defective in procedure. In implementing its program, the department apparently had been reluctant to act on failure by some districts to comply with the deficiencies found in on-site reviews. Its desk audit procedure did not seem to be effective.

Nebraska's program fell between Iowa on the one hand and Kansas and Missouri on the other. Its vocational education reviews were comparable in quality to Iowa's and there was indication of significant efforts. It had taken a variety of measures to promote desegregation and nondiscriminatory teaching, but these had been somewhat more limited than Iowa's, largely because of differing views of the two State departments regarding their authority over local education agencies.

The Advisory Committees question whether States are ready to assume deferral authority from the Department of Education. Clearly the States had grave reservations about their capacity to do so or doubts whether they would do so absent Federal financial assistance. But more important, the variation in the quality of existing State efforts suggests that all four States in this region are not equally capable of administering an effective antidiscrimina-

tion program in a uniform manner. Were the U.S. Department of Education to require fully effective compliance programs from the States in such areas as vocational education, this might be a first step toward establishing a uniform framework from which deferral would become possible, subject to Federal review. But the existing constraints on Department of Education resources may make the effort required beyond possibility. In the long term, however, such an effort might well result in a substantial reduction in the burdens regional civil rights offices must assume.

Unequal administration of the civil rights requirements by the four States is inexcusable. It is clear that State education agencies have an equal obligation to ensure nondiscrimination in all education programs within their States. The Federal prohibitions of discrimination in education programs are national, they do not admit the possibility of geographic variation.

Once pending litigation is resolved in Missouri, that State's Department of Elementary and Secondary Education can acknowledge the mandate from the Federal Courts and make whatever changes are necessary in State education policies and practices to eliminate all vestiges of the historic patterns of discrimination. Freed of the need to avoid changes for fear of prejudicing pending litigation, the Missouri department should be able to make significant improvements in the quality of its civil rights reviews by identifying the residues of past discrimination that need to be eliminated as well as noting current discriminatory practices and obtaining change. This will require a significant increase in the scope of the department's investigation of school district policies and practices to ensure that they are not in even potential violation of the various Federal and State prohibitions of discrimination. It will also require a firmer demand for fully effective remedies by local school districts of problems identified during State reviews.

The Kansas Department of Education has, in the past, copied Missouri's procedures for determining the compliance of school districts with the Federal vocational education regulations. But it should be able to develop its own procedure, perhaps by expanding the range of States from which it draws examples, that will allow Kansas to have fully effective means of assuring compliance by local school districts with Federal regulations prohibiting discrimination in vocational education. As the home

of the lead case in *Brown*, Kansas has a special obligation to ensure that there is no discrimination in education programs. Whether by legislation or administrative action, the focus of this general responsibility should be clearly established. If the State education department is given this responsibility, it should consider establishing effective means for review of local school district compliance with Federal and State prohibitions of discrimination in education. These might include review of readily available published data on school policies or practices that have disparate impact as well as appropriate on-site reviews.

Findings and Recommendations

The following findings and recommendations are submitted under the provisions of Sec. 703.2(e) of the Commission's regulations, empowering the Advisory Committees to "Initiate and forward advice and recommendations to the Commission upon matters which the State Committee has studied."

The Advisory Committees present the findings and recommendations for consideration by the Commission in its national program planning and for its consideration in advising the President and Congress on matters within its jurisdiction.

Finding 1: The Advisory Committees found that the quality of general civil rights compliance efforts in education varied from State to State. Only the State of Iowa conducted annual reviews of civil rights problems in key school districts and made recommendations for changes.

Recommendation 1: The Advisory Committees urge the State education departments in Kansas, Missouri and Nebraska, to develop and implement annual civil rights reviews.

Finding 2: The Advisory Committees found great variation in the quality of the procedures and practices used by the State vocational education agencies to review compliance with vocational education civil rights requirements.

Recommendation 2: The Advisory Committees urge the State education departments of Iowa, Kansas, Missouri and Nebraska to revise and develop new procedures to ensure civil rights protection for all children.

Finding 3: The Advisory Committees found considerable reluctance by the State education departments to assume deferral roles in the administration of Federal civil rights requirements.

Recommendation 3: The Advisory Committees recommend that the U.S. Commission on Civil Rights consider a nationwide study of the willingness and capacity of State education departments to assume a

deferral role on civil rights matters in the schools, and on the basis of such a study, determine what steps should be taken either to strengthen the Federal role or to enhance the capacity and commitment of States to take a deferral role.

